

1
2
3
4
5
6
7
8 **UNITED STATES DISTRICT COURT**
9 **CENTRAL DISTRICT OF CALIFORNIA**
10

11 JAMES W. MENEFIELD,

12 Plaintiff,

13 v.

14 CALIFORNIA DEPARTMENT OF
15 CORRECTIONS AND
16 REHABILITATION, et al,

17 Defendants.
18

Case No. 2:23-cv-03812-PA (E)

**ORDER ACCEPTING FINDINGS AND
RECOMMENDATIONS OF UNITED
STATES MAGISTRATE JUDGE**

19 Pursuant to 28 U.S.C. § 636, the Court has reviewed the Third Amended
20 Complaint, all the records herein, and the attached Report and Recommendation of
21 the United States Magistrate Judge (“Report”). Further, the Court has engaged in a
22 *de novo* review of those portions of the Report to which objections have been made.

23 The Report recommends dismissal of this action after finding that Plaintiff,
24 despite multiple attempts, has failed to state a claim for which relief may be granted
25 regarding Defendants’ allegedly inadequate response to the COVID-19 pandemic in
26 the prison where Plaintiff is incarcerated. For the following reasons, Plaintiff’s
27 Objections to the Report do not warrant a change to the Report’s findings or
28 recommendation.

1 Plaintiff objects that, as to his Eighth Amendment claim, Defendants were
2 deliberately indifferent for failing to follow a court-appointed Receiver's
3 recommendation to transfer high-risk inmates to "closed-front-cell housing." (ECF
4 No. 19 at 4-5.) But as Plaintiff acknowledges (*id.* at 7), the Receiver's
5 recommendation was not binding on prison administrators. *See Plata v. Newsom*,
6 2022 WL 1210694, at *3 (9th Cir. Apr. 25, 2022) ("[T]he Receiver's authority
7 extends to the prisoner's health care system, not overall prison administration.").

8 Moreover, as the Report found, it is undisputed that Defendants took several
9 measures to mitigate the risks of the pandemic. The measures included distancing
10 bunk bed pods from each other, social distancing, wearing masks and personal
11 protective equipment, screening, testing, contact tracing, quarantining, and
12 curtailing many activities. (ECF No. 16 at 6.) Given the numerous measures that
13 Plaintiff admits were taken, his objection that Defendants failed to transfer him to a
14 closed or single cell does not state a claim of deliberate indifference under the
15 Eighth Amendment. *See Polanco v. Diaz*, __F.4th__, 2023 WL 5008202, at *7 (9th
16 Cir. 2023) (noting that measures actually taken to mitigate the risks of COVID-19
17 in prison could show that defendants had not intended to expose prison employees
18 to an unreasonable risk) (citing *Patel v. Kent School Dist.*, 648 F.3d 965, 976 (9th
19 Cir. 2011) (holding that a teacher's "lapse in judgment" did not rise to the level of
20 deliberate indifference because she was "fairly active" in attempting to protect the
21 plaintiff)); *Chunn v. Edge*, 465 F. Supp. 3d 168, 204 (E.D. N.Y. 2020) (holding that
22 an inmate could not show deliberate indifference simply from prison officials'
23 failure to implement perfectly "complex guidelines during a novel crisis" and
24 noting that isolating prisoners "requires complex implementation").


25 Plaintiff further objects that, as to his equal protection claim, he was similarly
26 situated to other inmates who were entitled to transfer within the prison due to their
27 vulnerability to COVID-19. (ECF No. 19 at 10.) Specifically, Plaintiff asserts that
28 his "risk score of 3," combined with the fact that he was housed in an "open dorm

1 setting or open bar cell,” entitled him to the same treatment received by inmates
2 who were eligible for transfer. (*Id.*) These assertions fail to call into question the
3 Report’s finding that there was nothing irrational about give more protective
4 treatment to inmates with a risk score of 10 or above in deciding inmate transfers.
5 (ECF No. 16 at 17.) Plaintiff has failed to identify any individual or group situated
6 similarly to himself for equal protection purposes but, instead, has revealed only
7 how different he is from the inmates who are more medically vulnerable. Thus, he
8 has failed to state an equal protection claim. *See Thornton v. City of St. Helens*, 425
9 F.3d 1158, 1168 (9th Cir.2005) (“[D]ifferent treatment of unlike groups does not
10 support an equal protection claim.”); *Sanders v. Macauley*, 2022 WL 16729580, at
11 *4 (6th Cir. 2022) (“Because it is rational to treat prisoners who may have been
12 exposed to COVID-19 differently than those who have not, the district court
13 correctly determined that the complaint failed to state an equal protection claim.”).

14 IT IS ORDERED that Judgment shall be entered dismissing the Third
15 Amended Complaint and the action without leave to amend and with prejudice.

16 IT IS FURTHER ORDERED that the Clerk serve forthwith a copy of this
17 Order and the Judgment of this date on Plaintiff and on counsel for Defendants.

18
19 DATED: August 29, 2023

20
21 
22 PERCY ANDERSON
23 UNITED STATES DISTRICT JUDGE
24
25
26
27
28